



February 9, 2001

Ms. Jeanine A. Cadena
Bickerstaff, Heath, Smiley, Pollan, Kever & McDaniel, L.L.P.
3000 Bank One Center
1717 Main Street
Dallas, Texas 75201-4335

OR2001-0499

Dear Ms. Cadena:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144125.

The Town of Flower Mound (the "town"), which you represent, received a request for information related to disciplinary actions taken by the town against a named police officer. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with the common law right of privacy. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses the common law right to privacy. This right protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). However, the scope of privacy protection for public employees is narrow. Open Records Decision No. 423 at 2 (1984). Information about public employee disciplinary actions is not protected by the common law right of privacy. Open Records Decision No. 444 (1986). Further, the conditions for continued employment of a public employee are also matters of legitimate public interest, not protected by the common law right of privacy. *See* Open Records Decision No. 438 (1986).

The submitted materials indicate that the subject officer participated in a treatment program funded by the city, and that certain conditions of continued employment were imposed on this officer following that treatment. We find that there is a legitimate public interest in this type of information. Therefore, the responsive information is not excepted from public disclosure by section 552.101 of the Government Code in conjunction with the common law right of privacy, and it must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

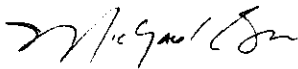
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Jay Burns".

Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/er

Ref: ID# 144125

Encl: Submitted documents

cc: Ms. Amy Ritter
Lewisville News
131 West Main Street
Lewisville, Texas 75067
(w/o enclosures)